SUPREME COURT OF THE UNITED STATES

DONALD E. JOHNSON, JR. *v.*
RANDALL EDWARD REX

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 84–1990. Decided November 4, 1985

The petition for writ of certiorari is denied.

THE CHIEF JUSTICE, with whom JUSTICE REHNQUIST and JUSTICE O'CONNOR join, dissenting.

In this case the United States Court of Appeals for the Tenth Circuit held that a prosecutor is not entitled to absolute immunity from liability in a civil rights suit brought under 42 U. S. C. § 1983 based upon the prosecutor's presence during questioning of the plaintiff. Absolute immunity was denied even though the prosecutor was present not as an investigator but as a counsel to advise on compliance with *Miranda* v. *Arizona*, 384 U. S. 436 (1966).

In *Imbler* v. *Pachtman*, 424 U. S. 409 (1976), this Court established an absolute immunity for prosecutors engaged in activities associated with the criminal process. This Court left open the extent to which investigative activities by prosecutors would also come within the umbrella of absolute immunity. But the principle of absolute immunity established in *Imbler* was based on the need to ensure sound decisionmaking by the prosecutor by protecting from fear of retaliatory suits for vigorous law enforcement. Here the prosecutor was acting as an officer of the court in ensuring compliance with the *Miranda* requirements and I would grant the petition for certiorari in order to define the applicability of absolute immunity in this context; surely the prosecutor's action was well within his function as a prosecutor and officer of the court.

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